

TO MR. CARY

FROM: WPB

DATE 28 July 1975

SUBJECT: Proposed comments (unsolicited) on S. 2008
SUSPENSE DATE _____

NOTE:

S. 2008 is the Tunney-Edwards Criminal Justice Information bill. I have been asked by the staff of Tunney's subcommittee to forward our comments on the bill as soon as possible. *They are quite similar to our reports on H.R. 61 and the Justice draft bill.*

COORDINATED WITH (list names as well as offices):

STATINTL

Name

OGC

Office

Name

Office

Name

Office

ACTION REQUIRED BY GLC: Approve for final

Dear Mr. Chairman:

I am offering for your consideration our comments on S. 2008, a bill concerning criminal justice information. The Central Intelligence Agency is strongly committed to the underlying objective of the proposed legislation, which is to protect the right of privacy of citizens of the United States. S. 2008 seeks to afford this protection by controlling the collection, use, and dissemination of three classes of information--"criminal justice information," "criminal justice investigative information," and "criminal justice intelligence information." Access to such information would be limited to "criminal justice agencies," and the use or further dissemination of such information would be confined to the "administration of criminal justice."

The Central Intelligence Agency is not a "criminal justice agency." As a non-criminal justice agency, however, the Agency's access to important foreign intelligence information could be seriously impaired by S. 2008.

It has been ascertained in discussions with the staff of the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, that it was not intended to characterize the Central Intelligence Agency as a "criminal justice agency" in this legislation. This intent is consistent with, and indeed mandated by, the proscriptions of section 102(d)(3) of the National Security Act of 1947:

... That the Agency shall have no police,
subpoena, law-enforcement powers, or
internal-security functions ...

The Central Intelligence Agency's scope of authority is limited to foreign intelligence matters; it is definitely not a "criminal justice agency," nor

is it involved in the "administration of criminal justice" or other criminal justice activity. We believe it would be helpful if section 102--the definitional section of the bill--were modified to further clarify this fact and to reflect more clearly the intent of the Committee.

While the Central Intelligence Agency is not to be considered a criminal justice agency, as a non-criminal justice agency under S. 2008 it would be confronted with limitations which could impinge upon its essential responsibilities by barring Agency access to important foreign intelligence information.

The dissemination of foreign intelligence information is a principal statutory function of the Central Intelligence Agency. Section 102(d)(3) of the National Security Act of 1947 imposes on the Agency a duty

... to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities ...

Moreover, section 102(e) of that Act provides:

... To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government ... relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as

relates to the national security and is
possessed by such departments and other
agencies of the Government ... shall be
made available to the Director of Central
Intelligence for correlation, evaluation,
and dissemination ...

Foreign intelligence information is ~~any~~ significant information on foreign areas, developments, or personalities. From time to time, it may include information on foreign personalities or events relating to criminal conduct, such as information on foreign terrorist organizations, international narcotics traffickers, or background information on foreign personalities. Such foreign intelligence information could fall within the definition of "criminal justice information," "criminal justice investigative information," or "criminal justice intelligence information," because the sections of S. 2008 which define these three categories are not limited to the domestic sphere but can be read to include information from foreign sources, concerning foreign citizens, and relating to conduct made criminal under foreign laws. By so broadly defining these categories of information and by restricting access to and use of such information to criminal justice agencies and purposes, S. 2008 cuts across the legitimate foreign intelligence interests of the Central Intelligence Agency. The restrictions of sections 103(b) and 201 could preclude the Agency from receiving or using information held by a foreign or domestic agency concerning appropriate subjects of foreign intelligence interest. The limitations in section 205 could prohibit the Agency from disseminating this foreign intelligence information to appropriate recipients.

I recommend that S. 2008 be modified to take into account the fact that foreign intelligence information occasionally includes material which relates to criminal activity and that the Central Intelligence Agency has the responsibility to collect, use, and disseminate such information.

It is noted that section 204(b) would permit non-criminal justice agencies to use criminal justice information in screening applicants or for approving or reviewing security clearances. This Agency has a related interest. Occasionally, the Agency may wish to obtain criminal justice information on individuals who are being considered as possible intelligence sources or for operational purposes without initially notifying the individual under consideration. There does not appear to be a provision for this security procedure in S. 2008.

I would like to propose for your consideration the amendments set forth in the attachment. I believe they would satisfy the considerations discussed above, while preserving the intent and objectives of the legislation.

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PROPOSED AMENDMENTS TO S. 2008

I. Amendment to Section 102

(1) Strike section 102(5) and insert in lieu thereof:

(5) "Criminal justice information" means arrest record information, non-conviction record information, conviction record information, criminal history record information, and correctional and release information pertaining to a citizen of the United States. The term does not include criminal justice investigative information or criminal justice intelligence information.

(2) Strike section 102(12) and insert in lieu thereof:

(12) "Criminal justice investigative information" means information associated with a citizen of the United States compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act including information pertaining to that criminal act derived from reports of informants and investigators, or from any type of surveillance. The term does not include criminal justice information nor does it include initial reports filed by a criminal justice agency describing a specific incident, not indexed or accessible by name and, expressly required by State or Federal statute to be made public."

(3) Strike section 102(13) and insert in lieu thereof:

(13) "Criminal justice intelligence information" means information associated with a citizen of the United States compiled by a criminal justice agency in the course of conducting an investigation of any individual relating to possible future criminal activity of an individual, or relating to the reliability of such information, including information derived from reports of informants, investigators, or from any type of surveillance. The term does not include criminal justice information nor does it include initial reports filed by a criminal justice agency

describing a specific incident, not indexed or accessible by name and expressly required by State or Federal statute to be made public.

II. Amendment to Section 204

Insert after section 204(b) the following new subsection and redesignate subsection (c) as (d):

"(c) In the interests of promoting all-sources foreign intelligence production, and in order further to implement sections 102(d)(3) and 102(e) of the National Security Act of 1947, as amended, criminal justice agencies may make available criminal justice information, criminal justice intelligence information, and criminal justice investigative information to the Director of Central Intelligence as directed by the National Security Council only where appropriate for foreign intelligence purposes and as provided in subsection (b) of this section. The Director of Central Intelligence shall insure that information received pursuant to this subsection is used solely for proper foreign intelligence purposes."